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From: Michael R. Ward (Reg. No. 38,651)

Date: April 21, 2004

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OUR DOCKET NO: 499962000700

APPLICANT: Nathan K. OLIVAS et al.

SERIAL NO: 10/052,061

FILED: January 16, 2002

TITLE: PACER LETTUCE VARIETY

ART UNIT: 1638

EXAMINER: D. H. Kruse

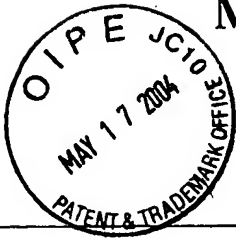
Comments:

Pursuant to our conversation of today, please find the attached.

PAPERS ATTACHED FOR THIS FACSIMILE:

1. Copy of response to office action of June 17, 2003, as filed July 18, 2003 (requested by Examiner Kruse) – 10 pages

>>CONFIRMATION OF RECEIPT REQUESTED<<



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To: **EXAMINER D. H. KRUSE**
USPTO

Facsimile: 571-273-0799
Telephone: 571-272-0799

From: Michael R. Ward (Reg. No. 38,651)

Date: April 12, 2004

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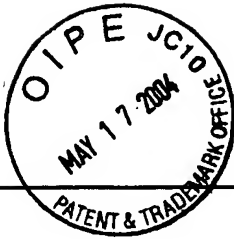
Comments:

Pursuant to our conversation of today, please find the attached.

PAPERS ATTACHED FOR THIS FACSIMILE:

1. Copy of Replacement Response to Office Action of June 17, 2003 as filed April 12, 2004 - 9 pgs
2. Copy of the letter received from ATCC dated February 7, 2002 - 1 pg

>>CONFIRMATION OF RECEIPT REQUESTED<<



Interview Summary

Application No.: 10/052,061 First Named Applicant: Nathan K. OLIVAS
Examiner: D. Kruse Art Unit: 1638

Participants:

(1) Michael R. Ward (2) _____
(3) _____ (4) _____

Date of Interview: April 21, 2004

Type of Interview:

(1) ☒ Telephonic (2) ☐ Personal (3) ☐ Video Conference

Exhibits Shown or Demonstrated: ☐ YES ☒ NO

If yes, provide brief description: _____

Issues Discussed

Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) _____	<u>1, 3, 11</u>	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(2) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Continuation Sheet Attached

Brief Interview Summary:

The language of claims 1, 3, and 11 was discussed. The Examiner informed applicant of an error in the amendment filed July 21, 2003, and of suggested changes to the claims to put the application in condition for allowance. Applicant submitted an amendment via fax on April 21, 2004, and a correction on April 23, 2004, which has been sent for scanning. This confirms the submission of the amendment of April 21, 2004.

Michael R Ward

(Applicant/Applicant's Representative Signature)

#38,651

**BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF
THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE****INTERNATIONAL FORM****RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3
AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.2****To: (Name and Address of Depositor or Attorney)**

Morrison & Foerster LLP
Attn: Michael R. Ward
425 Market Street
San Francisco, CA 94105

Deposited on Behalf of: Progeny Advanced Genetics**Identification Reference by Depositor:****Patent Deposit Designation**

Lactuca sativa: Sun Devil (Ref: Docket or Case No.: 49996-20002.00)

PTA-4008

Lactuca sativa: Legend (Ref: Docket or Case No.: 49996-20011.00)

PTA-4009

Lactuca sativa: Pacer (Ref: Docket or Case No.: 49996-20007.00)

PTA-4010

Lactuca sativa: Icon (Ref: Docket or Case No.: 49996-20010.00)

PTA-4011

The seeds were accompanied by: a scientific description a proposed taxonomic description indicated above.
The seeds were received January 24, 2002 by this International Depository Authority and have been accepted.

AT YOUR REQUEST: X We will inform you of requests for the seeds for 30 years.

The seeds will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Patent is issued citing the seeds and ATCC is instructed by the United States Patent & Trademark Office or the depositor to release said seeds.

If the seeds should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace them with viable seeds of the same.

The seeds will be maintained for a period of at least 30 years from date of deposit, or five years after the most recent request for a sample, whichever is longer. The United States and many other countries are signatory to the Budapest Treaty.

The viability of the seeds cited above was tested January 28, 2002. On that date, the seeds were viable.

International Depository Authority: American Type Culture Collection, Manassas, VA 20110-2209 USA.

Signature of person having authority to represent ATCC:


Marie Harris, Patent Specialist, Patent Depository

Date: February 7, 2002

REMARKS

Applicants attach their facsimile dated April 21, 2004, in response to Examiner Kruse' communication of April 20, 2004, which includes the indicated corrections and amendments as recommended by Examiner Kruse in a telephonic conference on April 12, 2004.

Applicants additionally attach courtesy copies of the amendments forwarded to Examiner Kruse via facsimile on April 12, 2004 and April 13, 2004.

Finally, Applicants include an **Interview Summary** outlining the amendments, agreed upon and provided to Examiner Kruse on April 21, 2004.

The Examiner indicates he will proceed with the allowance when the supplemental amendment has been scanned and entered.

This matter should now be in condition for allowance.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **499962000700**. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

Dated: May 14, 2004

By: Michael R. Ward
Michael R. Ward
Registration No. (38,651)

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